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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/812,093 | 03/30/2004 | Sunil Kochhar | 88265-6578 | 3096 |

29157 7590 05/09/2005

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EXAMINER

PADEN, CAROLYN A

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|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1761

DATE MAILED: 05/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/812,093 | KOCHHAR ET AL. | |
| | Examiner | Art Unit | |
| | Carolyn A. Paden | 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3-28-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
- 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
- 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3-30-04</u> . | 6) <input type="checkbox"/> Other: _____ |

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This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth below or on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. Table 3 does not contain the appropriate sequence identification that is required by MPEP 2421.

Applicant is given ONE MONTH, or THIRTY DAYS, whichever is longer, from the mailing date of this office action within which to comply with the sequence rules, 37 CFR 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g). Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). In no case may an applicant extend the period for reply beyond the SIX MONTH statutory period. Direct the reply to the undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the reply.

Art Unit: 1761

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in claim 1 as to how the peptides of (vi) are recovered to from a cocoa or chocolate flavor precursor. An amendment to the claims clarifying this issue would overcome the rejection.

Claims 1-9 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen (WO 96/38472).

Rasmussen discloses cocoa flavour precursor peptides from West African cocoa beans. The cocoa flavor is produced by mixing

the peptide with a reducing sugar and roasted. The cocoa flavour may be added to foods, cosmetics or pharmaceutical products. The claims appear to differ from the references in the method by which the product is made but process limitations do not carry any weight in product claims (note *In re Thorpe* 227 USPQ 964). It would have been obvious to one having ordinary skill in the art to utilize the cocoa flavour of Rasmussen in a chocolate product in order to boost the chocolate impact of the product.

Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rusoff (2,835,590).

Rusoff discloses the preparation of an artificial chocolate flavor by the manufacture of peptides containing 2-5 amino acids that are shown on columns 1 & 2. Then the peptides are reacted with saccharide to form the chocolate flavor. The claims appear to differ from the reference in the method by which the peptides are formed but process limitations do not carry any weight in product claims (note *In re Thorpe* 227 USPQ 964). It would have been obvious to one having ordinary skill in the art to utilize the cocoa flavour of Rusoff in a chocolate product or in a food product generally in order to add and boost the chocolate impact of the product.

Claims 10 & 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voigt abstracts (Food Chemistry 49(2)173; 50(2)177 & 51(2)197).


Each of the Voigt abstracts discloses the use of peptides produced by the degradation of cocoa seeds with aspartic endoprotease. Upon reaction with reducing sugars and roasting, a cocoa flavor results. The claims appear to differ from the reference in the method by which the product is made but process limitations do not carry any weight in product claims (note *In re Thorpe* 227 USPQ 964). It would have been obvious to one having ordinary skill in the art to utilize the process of Voigt to produce the cocoa flavour of the claims because the ingredients in claims and Voigt are the same.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax

phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CAROLYN PADEN 5-5-05
PRIMARY EXAMINER 1761